

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

R. CATHY REARDON, on behalf of)	
herself and all similarly situated)	
individuals,)	Civil Action No. 2:08-cv-01730
)	
Plaintiffs,)	Judge Mark R. Hornak
)	
v.)	<i>Electronically Filed</i>
)	
CLOSETMAID CORPORATION,)	
)	
Defendant.)	

**DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION
IN LIMINE TO EXCLUDE WITNESS TESTIMONY (DOC. 156)**

Defendant, ClosetMaid Corporation (hereinafter “ClosetMaid” or “Company”), by and through its attorneys, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., files this Response in Opposition to Plaintiff’s Motion *in Limine* to Exclude Witness Testimony that is not Based on Personal Knowledge (“Plaintiffs’ Motion”)(Doc. 155). Plaintiffs’ Motion addresses the anticipated testimony of Merlyn Hernandez-Opio, Patricia Dameron, and Jennifer Boring.

In an attempt to streamline and simplify trial issues, counsel for ClosetMaid has conferred with class counsel regarding the pending motions *in limine* and has informed class counsel that it will not proffer the testimony of Ms. Hernandez-Opio or Mr. Dameron at trial, thus mooted Plaintiffs’ Motion as to those potential witnesses. ClosetMaid does, however, intend to proffer the testimony of Ms. Boring, the Employee Relations Manager at ClosetMaid.

Plaintiffs had the opportunity to depose Ms. Boring and test her “personal knowledge” regarding her Declaration as well as any other matters in which they wished to inquire. On many points, Plaintiffs chose to not inquire into Ms. Boring’s knowledge on such topics at her deposition. For example, Plaintiffs seek to prevent Ms. Boring from testifying as to

ClosetMaid's "job applicant disposition codes, job applicants and their applications, and the disposition of job applications for any and all job applications from December 13, 2006 to present," yet they chose not to inquire or otherwise failed to inquire about her knowledge with regard to the meaning and use of job applicant disposition codes or the job applications of Pre-Adverse Action Sub-Class members other than Ms. Reardon. Upon inquiry into Ms. Reardon's file, Ms. Boring testified in detail as to her personal knowledge of the disposition of Reardon's application for employment.

While Plaintiffs attempt to "cherry pick" parts of her deposition in their Motion, a review of her deposition transcript establishes that Ms. Boring has knowledge of ClosetMaid's policies and practices that endeavored to comply with the Fair Credit Reporting Act and she is competent to testify based upon her personal knowledge regarding those Company policies and practices.

In addition, Ms. Boring is competent to testify as to the contents of business records maintained by ClosetMaid, admissible pursuant to Federal Rule of Evidence 803(6), and ClosetMaid intends to have Ms. Boring proffer those documents, including related Fed. R. Evid. 1006 summaries per the Court's encouragement, particularly as it relates to members of the Pre-Adverse Action Sub-Class.

Yesterday, Plaintiffs filed a Motion to Permit Pre-Trial *Voir Dire* of ClosetMaid Witnesses. (Doc. 163). ClosetMaid will file a response to that motion by Noon on December 16, 2013, as directed by this Court's text-only Order entered at 9:16 PM EST on Thursday, December 12, 2013. ClosetMaid believes that any additional issues not discussed herein that may relate to Ms. Boring's anticipated testimony will be fully addressed in its response to Plaintiff's Motion to Permit Pre-Trial *Voir Dire*.

Accordingly, ClosetMaid respectfully requests that this Court deny Plaintiffs' Motion as it relates to the testimony at trial of Ms. Boring.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

/s/ **W. Scott Hardy**

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Counsel for ClosetMaid Corporation

Dated: December 13, 2013

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE WITNESS TESTIMONY** was filed electronically on December 13, 2013. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ **W. Scott Hardy**

Counsel for Defendant

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